

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

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|------------------------|---|-------------------------|
| MICHAEL S. AGOVINO, | : | No: 4:10-CV-0656 |
| | : | |
| Plaintiff | : | (Judge McClure) |
| vs. | : | |
| | : | Complaint Filed 3/25/10 |
| CHRISTOPHER A. BAILES, | : | JURY TRIAL DEMANDED |
| | : | |
| Defendant | : | |

**PLAINTIFF'S BRIEF IN SUPPORT OF MOTION FOR EXTENSION OF TIME
TO FILE A MOTION FOR SUMMARY JUDGMENT NUNC PRO TUNC**

This Court's Scheduling Order dated July 2, 2010 required that Summary Judgment motions be filed by October 15, 2010 and Motions in Limine to be filed by December 10, 2010. The undersigned mistakenly believed that a Motion for Summary Judgment would be due on the latter date, December 10, 2010, and he did not discover his mistake until November 1, 2010. Attached to the Plaintiff's Motion as Exhibit A is the Plaintiff's Motion for Summary Judgment that he desires to file in this case. It may be meritorious and the Defendant will not be unfairly prejudiced if Plaintiff is permitted to file it. Pursuant to Rule 6(b)(1)(B) this Court may extend the time for a party to file a Motion for Summary Judgment after the time to do so has expired "if the party failed to act because of excusable neglect." Excusable neglect encompasses "late filings [that] were due to mistake, inadvertence or carelessness and not to bad faith". Panis v. Mission Hills Bank, N.A., 60 F. 3d 1486, 1494 (10th Cir. 1995); Mattress Giant Corporation v. Motor Advertising & Design Inc., 2008 U.S. Dist. Lexis 26486 (N.D. Texas). Plaintiff's

failure to file his summary judgment motion before the deadline was due to his attorney's mistake, inadvertence or carelessness and not due to bad faith. Accordingly, Plaintiff respectfully requests this Court to grant his Motion to file a Summary Judgment Motion Nunc Pro Tunc.

Respectfully submitted,

ELION, WAYNE, GRIECO, CARLUCCI,
SHIPMAN, DINGES & DINGES, P.C.

BY s/David C. Shipman

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CERTIFICATE OF SERVICE

David C. Shipman, Esquire, hereby certifies and says that on this 10th day of November, 2010, he served a copy of the Plaintiff's Brief in Support of Motion for Extension of Time to file a Motion for Summary Judgment Nunc Pro Tunc upon the following by mailing a copy of same to the above-show address, postage prepaid, first class mail:

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